

Application No. 10/811,606
Amendment dated June 18, 2007
Reply to Office Action of March 20, 2007

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REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Office Action mailed on March 20, 2007, and the references cited therewith.

Claims 1, 6, 10, 12, and 16 are amended, claims 5 and 11 are canceled, and no claims are added; as a result, claims 1-4, 6-10, and 12-20 are now pending in this application.

§ 102 Rejection of the Claims

Claims 1-6, 10-12, 16 and 17 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,278,360 to Carbe et al. (hereinafter "Carbe").

Applicant respectfully traverses the rejection as follows.

Applicant respectfully submits that Carbe does not teach all the elements and limitations recited in claims 1, 10, and 16 as amended. For example, Carbe does not appear to teach an insert adapted to be inserted into the shell aperture, the insert having a chamber therein, the chamber adapted to directly receive a cerumen-trapping accessory, a receiver aperture adapted to communicate with the receiver tube, and an ear canal aperture adapted to communicate with the ear of the wearer and a plurality of customizable, interchangeable caps covering the ear canal aperture, as provided in claims 1, 10, and 16 as amended.

In the Office Action, it was asserted that the housing element 12 in Carbe corresponds to an insert adapted to be inserted into the shell aperture, and that the wax guard insert 14 corresponds to a cap covering the ear canal aperture. (See Page 2). In addition, the Office Action asserts that the insert 12 comprises a chamber 46.

First, Applicant respectfully submits that the internal passage 46 in Carbe appears to be taught as part of the wax guard insert 14 rather than as part of the housing 12. In addition, Applicant respectfully notes that Carbe appears to teach that the housing 12 receives the wax guard insert 14 directly in the internal passage 24 using the internal threads 26.

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As such, Applicant respectfully submits that Carbe does not appear to teach an insert adapted to be inserted into the shell aperture, the insert having a chamber therein, the chamber adapted to directly receive a cerumen-trapping accessory, as provided in claims 1, 10, and 16. Rather, the internal passage 24 of the housing 12 receives the wax guard insert 14.

In addition, the wax guard insert 14 does not appear to anticipate the insert as claimed since the wax guard insert 14 does not appear to include a plurality of customizable, interchangeable caps covering the ear canal aperture, as claimed in claims 1, 10, and 16.

Based on the forgoing, Applicant respectfully submits that Carbe does contain each and every element and limitation of independent claims 1, 10, and 16, as amended. As such, Applicant respectfully submits that Carbe does not support a 102(b) rejection of claims 1, 10, and 16. Applicant respectfully requests reconsideration and withdrawal of the 102(b) rejection for independent claims 1, 10, and 16, as well as those claims which depend therefrom.

§103 Rejection of the Claims

Claims 7-9, 13-15 and 18-20 were rejected under 35 USC § 103(a) as being unpatentable over Carbe et al. in view of Haertl (U.S. Patent No. 4,987,597). Applicant respectfully traverses the rejection as follows.

Claims 7-9, 13-15, and 18-20 depend from independent claims 1, 10, and 16, respectively, which are in condition for allowance for at least the reasons stated above. That is, Carbe does not teach each and every element contained in Applicant's independent claims 1, 10, and 16. The Haertl reference does not cure the deficiencies of Carbe. For example, Haertl does not describe, teach, or suggest, independently or in combination, an insert adapted to be inserted into the shell aperture, the insert having a chamber therein, the chamber adapted to directly receive a cerumen-trapping accessory, a receiver aperture adapted to communicate with the receiver tube, and an ear canal aperture adapted to communicate with the

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ear of the wearer and a plurality of customizable, interchangeable caps covering the ear canal aperture, as provided in claims 1, 10, and 16 as amended.

As such, Applicant respectfully submits that each and every element and limitation of independent claims 1, 10, and 16 as amended are not taught or suggested by Haertl and Carbe, either individually or in combination. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejection of dependent claims 7-9, 13-15, and 18-20.

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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 236-0122 to facilitate prosecution of this matter.

CERTIFICATE UNDER 37 C.F.R. §1.8:

The undersigned hereby certifies that this correspondence is being transmitted to the United States Patent Office facsimile number (571) 273-8300 on

June 18, 2007

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